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BRADLEY M GANZ, PC
P O BOX 10105
PORTLAND, OR 97296

EXAMINER
BOYCE, ANDRE D

ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 12/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.		Applicant(s)
Office Action Summary	09/538,570		REBANE, GEORGE J.
	Examiner		Art Unit
	Andre Boyce		3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 September 2003*.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28,30-34,51-68 and 89-95* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-28,30-34,51-68 and 89-95* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application)
since a specific reference was included in the first sentence of the specification or in an Application Data Sheet.
37 CFR 1.78.

    a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific
reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) ☐ Interview Summary (PTO-413) Paper No(s). _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: .

DETAILED ACTION

Response to Amendment

1.	This non-final office action is in response to Applicant's amendment filed

September 15, 2003. Claims 1, 8, 25, 31, 51, 54, 55, 89, and 90 have been

amended. Claim 29 is missing. Claims 1-28, 30-34, 51-68, and 89-95 are pending

2.	The previously pending objections to claims have been withdrawn. The

Examiner will not require Applicant to correct claim numbering due to missing claim

29 at this time. However, the claim numbering must be resolved, if and when the

application is allowed.

The previously pending rejections to claims 54 and 55 under 35 USC § 112 have

been withdrawn.

Claim Rejections - 35 USC § 112

3.	The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of
> making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the
> art to which it pertains, or with which it is most nearly connected, to make and use the same and shall
> set forth the best mode contemplated by the inventor of carrying out his invention.

4.	Claims 1-34, 51-68, and 89-95 are rejected under 35 U.S.C. 112, first paragraph,

as failing to comply with the enablement requirement.

Independent claims 1, 8, 51, 89, and 90 are rejected for lack of enablement

because the result of Applicant's invention cannot be assured or reproducible

without undue experimentation. For example, in claim 1 Applicant uses the term

"and/or" in lines 5 and 13 of the claim. Further, Applicant uses the term "at least

two" in line 8 of the claim. The "and/or" in line 3 gives rise to three permutations, while the "at least two" term in line 8 gives rise to at least 10 permutations. That equates to at least 30 permutations, which is *not reproducible without undue experimentation*. Independent claims 8, 51, 89, and 90 have the same problem.

5.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6.   Claims 1-34 and 51-68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected as being vague and indefinite. Claim 1 recites "and/or" in line 2, rendering the preamble vague at best and contradictory to the body of the claim in some cases. For example, the body of the claim includes a data capture server, a database, a plurality processing modules, and a presentation server. However, the preamble may just include data collection or evaluation or information generation or presentation.

Further, claim 1 includes "one or more database" in lines 20 and 23, and "one or more processing modules" in line 20. The Examiner is unclear whether these are different databases and modules from the ones recited earlier in the claim.

Claim 8 is rejected as being vague and indefinite. Claim 8 recites "and/or" in line 2, rendering the preamble vague at best and contradictory to the body of the claim in some cases. For example, the body of the claim includes a data capture server, a

database, a plurality processing modules, and a presentation server. However, the preamble may just include data collection or evaluation or information generation or presentation.

Further, claim 8 includes "one or more database" in lines 7 and 22, and "one or more processing modules" in line 22. The Examiner is unclear whether these are different databases and modules from the ones recited earlier in the claim.

Claim 51 is rejected as being vague and indefinite. Claim 51 recites "and/or" in line 2, rendering the preamble vague at best and contradictory to the body of the claim in some cases. For example, the body of the claim includes a data capture server, a database, a plurality processing modules, and a presentation server. However, the preamble may just include data collection or evaluation or information generation or presentation.

Claim Rejections - 35 USC § 101

7.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8.   Claims 1-34, 51-68, and 89-95 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

(1) whether the invention is within the technological arts; and

(2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter.

For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. In the present case the independent claims 1, 8, 51, 89, and 90 involve, use, or advance the technological arts (i.e., computer, processor, electronically, etc.).

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case independent claims 1, 8, 51, 89, and 90 do not produce a concrete, and tangible result.

Applicant's invention captures data, receives data into one or more databases, performs some process on the data via a specified module, stores processed data, and presenting items via a presentation server. These steps seem to manipulate and communicate data with no concrete or tangible result.

Concreteness is found lacking because the result of Applicant's invention cannot be assured or reproducible without undue experimentation. For example, in claim 1 Applicant uses the term "and/or" in lines 5 and 13 of the claim. Further, Applicant uses the term "at least two" in line 8 of the claim. The "and/or" in line 3 gives rise to three permutations, while the "at least two" term in line 8 gives rise to at least 10

permutations. That equates to at least 30 permutations, which is *not reproducible without undue experimentation*. Independent claims 8, 51, 89, and 90 have the same problem. Further, merely presenting selected items of data does not produce a concrete result.

Further, a disembodied manipulation of a mathematical or abstract idea does not produce a tangible result. Here, the independent claims 1, 8, 51, 89, and 90 process and manipulate data, lacking a tangible result. As an example, according to the language of claims 1 and 8 the processing modules may be in communication with *only each other and not a database*, leaving no result. Further, claims 89 and 90 simply present data over a web site, which is neither useful, concrete, nor tangible.

9.   The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

10.   Claims 1-3, 8-11, 13-15, 19, 23, 32-34, 51-56, 61, 62, 64-66, and 89-93 rejected under 35 U.S.C. 102(e) as being anticipated by Papierniak et al (USPN 6,128,624).

As per claims 1 and 8, Papierniak et al discloses a system for data collection, evaluation, information generation, and/or presentation (system 100, see Figure 4) comprising: a data capture server capable of receiving data from a data source over a computer network (server 130, see Figure 4), the data source providing data related to a transaction between buyers and sellers (customers 4, 6, and 8

connected to service provider 10, see Figure 3); one or more databases for receiving

data from the data capture server (web server 220, local storage 222, or mainframe

230, see Figure 5); a plurality of processing modules in communication with each

other and/or the one or more databases, each processing module performing a

predefined operation on data stored in a database or received from a processing

module (see Figure 6), at least two processing modules including a statistical

analysis processing module (statistical analysis via intelligent decision support tool

304, see Figure 7); and a dynamic activity-level icon module (tracking module 300

which provides web commerce usage data, see column 14, lines 18-21) for

iconically indicating to the user of a remote computer system a level of activity at a

predetermined network site (presentation of information via a personalized user

interface, see column 14, lines 38-43); one or more databases in communication

with one or more processing modules for storing processed data received from a

selected processing module; and a presentation server (web server 308) in

communication with one or more of the databases for receiving items of data stored

therein and presenting selected items of data as data or information (see column 14,

lines 38-45), data on the presentation server being accessible to remote computer

systems via a network (internet 310).

As per claim 2, Papierniak et al discloses the data capture server is in

communication with a data source comprising one or more remote computer

systems (remote information web server 240, see column 12, lines 56-58).

As per claim 3, Papierniak et al discloses the data capture server is adapted to receive data from computer systems of consumers following an online e-commerce transaction (see column 8, lines 56-58).

As per claim 9, Papierniak et al discloses the network over which the data source and data capture server communicate is the Internet (Internet 128, see Figure 4).

As per claim 10, Papierniak et al discloses the presentation server is accessible by remote computer systems via the Internet (Internet 128).

As per claim 11, Papierniak et al discloses a survey server that serves a survey questionnaire (interview questionnaire 382, see Figure 14) to a remote computer system comprising a data source so that a user of a remote computer system comprising the data source can complete the survey questionnaire, a completed survey questionnaire containing data supplied by the user being returnable to the data capture server over the internet.

As per claims 13-15, Papierniak et al discloses the remote computer systems comprise one or more merchant computer systems (business customer), a plurality of consumer computer systems (consumer), the presentation server is accessible by a plurality of merchant and consumer computer systems (via display 112, see Figure 4).

As per claim 19 and 23, Papierniak et al discloses one selected processing module comprises a statistical analysis processing module and one selected processing module comprises a dynamic activity-level icon module (as seen in above rejection of claims 1 and 8).

As per claims 32-33, Papierniak et al discloses the data capture and presentation

server includes the survey server (data discoverer 360, see column 20, lines 38-44).

As per claim 34, Papierniak et al discloses a single server (server 130, see

Figure 4) includes the data capture server, the presentation server and the survey

server.

As per claims 89-90, Papierniak et al discloses a presentation server (web server

308) that includes web pages containing data or information that has been derived

from at least two processing modules including a statistical analysis processing

module (statistical analysis via intelligent decision support tool 304, see Figure 7);

and a dynamic activity-level icon module (tracking module 300 which provides web

commerce usage data, see column 14, lines 18-21) for iconically indicating to the

user of a remote computer system a level of activity at a predetermined network site

(presentation of information via a personalized user interface, see column 14, lines

38-43), the web pages being accessible to a plurality of remote merchant and

consumer systems over a computer network (business customer and consumers).

As per claims 91 and 92, Papierniak et al discloses the network comprises the

Internet (internet 310).

As per claim 93, Papierniak et al discloses the web pages include evaluation

information about merchant performance, the information being derived from data

processed by a selected processing module (see column 14, lines 63-67).

Claims 51-56, 61, 62, and 64-66 are rejected based upon the rejection of claims

1, 2, 3, 3, 3, 2, 9, 11, 13, 15, and 14 respectively, since they are the method claims

corresponding to the system claims.

Claim Rejections - 35 USC § 103

11.   Claims 4-7, 17, 18, 20-22, 24-28, 30, 31, and 57-60 are rejected under 35 U.S.C.

103(a) as being unpatentable over Papierniak et al (USPN 6,128,624), in view of

Decker (USPN 6,430,305), in further view of Abu El Ata (USPN 6,560,569).

As per claims 4-7, 17, 18, 20-22, 24-28, and 30 , Papierniak et al does not

explicitly disclose a data stabilizer processing module for smoothing noisy or

variable data using a computational solution of a minimum variance Bayesian

estimation method, a saturation limited forecasting module for using available

historical or recently captured data along with an estimated and/or available

saturation population function as the basis for an algorithm that defines the growth of

the population to a maximum attainable level, or an alarm filter module for

monitoring data rates and sending a signal based on deviations from desired

thresholds from a normative rate. Decker discloses using Bayesian analysis in order

to analyze the statistical risk with accepting or denying a transaction, thereby

smoothing variable data in order to reach a conclusion (column 4, lines 19-33). Abu

El Ata discloses models used to determine estimates for business and growth rates,

including transaction rate and growth of volume (i.e. saturation forecasting, column

12, lines 24-32). Abu El Ata also discloses computational results (i.e., data rates)

compared to a theoretically best or ideal case, with any deviation diagnosed (i.e., alarm filter, column 10-11, lines 66-67 and 1-4). Papierniak, Decker, and Abu El Ata are all concerned with data manipulation, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a data stabilizer processing module, a saturation limited forecasting module, and an alarm filter module in Papierniak, as seen in Decker and Abu El Ata, respectively, as additional means of analyzing collected data, thereby increasing the robustness of the Papierniak system.

As per claim 31, Papierniak et al discloses a dynamic activity-level icon processing module (as seen in above rejection of claims 1 and 8).

Claims 57-60 are rejected based upon the rejection of claims 4-7 respectively, since they are the method claims corresponding to the system claims.

12.   Claims 12, 16, 63, 67, 68, 94, and 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papierniak et al (USPN 6,128,624), in view of Sundaresan (USPAP 2003/0033299).

As per claim 12, Papierniak et al does not disclose the remote computer systems comprise a plurality of consumer computer systems and the completed survey questionnaire contains data about an online transaction between the consumer and a merchant. Sundaresan discloses on-line surveys and feedback of business transactions collected from users (see page 3, ¶ 33). Both Papierniak and Sundaresan are concerned with the effective data and information collection and

analysis via the internet, therefore it would have been obvious to one having

ordinary skill in the art at the time the invention was made to include a survey

questionnaire that contains data about an online transaction between the consumer

and a merchant in Papierniak et al, as seen in Sundaresan, thereby providing

specific feedback, thus making the system more robust.

As per claims 16, 94, and 95, Papierniak et al does not disclose the presentation

server serves data comprising ratings about online merchants, the web pages

include ratings of merchant websites, and the web pages include ratings information

for one or more products, the ratings being based on data collected by the data

capture server from consumer computer systems. Sundaresan discloses a business

rating system 10 that receives users on-line surveys for ranking merchants and

products (see page 3, ¶ 32-33). Both Papierniak and Sundaresan are concerned

with the effective data and information collection and analysis via the internet,

therefore it would have been obvious to one having ordinary skill in the art at the

time the invention was made to include ratings about merchants and products in

Papierniak, as seen in Sundaresan, thereby providing a mechanism by which

searches of businesses can be ordered based upon specific criteria (see

Sundaresan, page 1, ¶ 7), thus making the system more robust.

Claims 63, 67, and 68 are rejected based upon the rejection of claims 12, 16,

and 16, respectively since it is the method claim corresponding to the system claim.

Response to Arguments

13.   In the Remarks, Applicant argues that Papierniak does not disclose the dynamic activity icon for iconically indicating to the user of a remote computer system a level of activity at a predetermined network site. The Examiner disagrees with Applicant's assertion and submits that Papierniak discloses tracking module 300 which provides web commerce usage data (see column 14, lines 18-21) and the presentation of information via a personalized user interface (see column 14, lines 38-43). This presentation of information is disclosed in Applicant's specification as representation of activity.

   With respect data stabilizer processing module, a saturation limited forecasting module, and the alarm filter module, the Examiner submits Decker and Abu El Ata as disclosing those modules, as seen in the above rejection.

Conclusion

14.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Boyce whose telephone number is (703) 305-1867. The examiner can normally be reached on 9:30-6pm M-F.

   If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9326.

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is (703)

308-1113.

adb

TARIQ R. HAFIZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600